

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DAVID LEE HARMON,

Plaintiff,

v.

Case No.: 2:20-cv-375-FtM-38MRM

FNU STEGEMANN and
CHARLOTTE COUNTY JAIL,

Defendants.

_____ /

OPINION AND ORDER¹

Plaintiff David Lee Harmon is confined in the Charlotte County Jail.² Harmon filed a *pro se* Complaint for Violation of Civil Rights under [42 U.S.C. § 1983](#) on May 28, 2020, alleging his First Amendment free exercise of religion rights are being violated. ([Doc. 1](#)). Harmon moves to proceed *in forma pauperis* on his Complaint. ([Doc. 5](#)). Because the Court finds Harmon barred from proceeding in this action *informa pauperis* under [28 U.S.C. § 1915\(g\)](#), the Court dismisses this action without prejudice.

“To help staunch a ‘flood of nonmeritorious’ prisoner litigation, the Prison Litigation Reform Act of 1995 (PLRA) established what has become known as the three-strikes rule.” [Lomax v. Ortiz-Marquez](#), No. 18-8369, 2020 WL 3038282, at *2 (U.S. June 8, 2020) (quoting [Jones v. Bock](#), 549 U.S. 199, 203, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007)). The rule prohibits a prisoner from bringing a suit *informa pauperis* if he

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² Even if Harmon is a pretrial detainee, he is considered a prisoner for purposes of review under [28 U.S.C. § 1915](#). See *Id.* § 1915A(c).

has had three or more suits “dismissed on the grounds that [the suits were] frivolous, malicious, or failed[ed] to state a claim upon which relief may be granted.” [28 U.S.C. § 1915\(g\)](#). “A dismissal of a suit for failure to state a claim counts as a strike, whether or not with prejudice.” [Lomax, 2020 WL 3038282](#), at *5.

The Court takes judicial notice that before bringing this action, Plaintiff had the following suits dismissed in the United States District Court for the Middle District of Florida, each which qualify as a strike under § 1915(g):

- Case No. 2:20-cv-154-FtM-TPB-MRM, order dated May 19, 2020 dismissing amended complaint under 28 U.S.C. § 1915(e)(2)(B)(ii);
- Case No. 2:20-cv-155-FtM-JES-MRM, order dated April 22, 2020 dismissing complaint under [28 U.S.C. § 1915A\(b\)\(1\)](#) and § 1915(e)(2)(B)(ii);
- Case No. 2:20-cv-165-FtM-JES-MRM, order dated April 15, 2020 dismissing complaint under [28 U.S.C. § 1915A\(b\)\(1\)](#) & (2);
- Case No. 2:20-cv-179-SPC-NPM, order dated April 2, 2020 dismissing complaint for abuse of judicial process and under [28 U.S.C. § 1915A\(b\)\(1\)](#); and
- Case No. 2:20-cv-293-FtM-SPC-NPN, order dated May 15, 2020 dismissing complaint under [28 U.S.C. § 1915A\(b\)\(1\)](#).

The Complaint does not allege that Harmon qualifies for the “sole exception” of imminent danger to a serious physical injury to overcome the three strikes bar. [Mitchell v. Nobles, 873 F. 3d 869, 872 \(11th Cir. 2017\)](#). If Plaintiff wishes to prosecute his claim, he must file his complaint in a new action accompanied by the \$400.00 filing fee.

Accordingly, it is now

ORDERED:

1. Plaintiff’s Complaint ([Doc. 1](#)) is **DISMISSED without prejudice under 28 U.S.C. § 1915(g)**.

2. The **Clerk** shall enter judgment, terminate any pending motions and close this file.

DONE and **ORDERED** in Fort Myers, Florida this 10th day of June 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1
Copies: All Parties of Record